

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 486 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

MALVIYANAGAR PRATHMIL SHALA

Versus

STATE OF GUJARAT

Appearance:

MR DC DAVE for Petitioner

Ms AMI YAGNIK, AGP for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/02/99

ORAL JUDGEMENT

Rule. Ms Ami Yagnik, learned AGP waives service of Rule for the respondent. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the Managing Trustee of Shri Malvijanagar Prathmic Shala, a Public Charitable Trust, has challenged the decision dated 11.11.1998 of the State Government in

the Revenue Department revising the price of the land admeasuring 517 sq.mtrs. in Final Plot No. 12 in Survey No. 399 in Rajkot from what was already earlier fixed in the year 1997.

3. The brief facts giving rise to this petition, as averred by the petitioner, as are under :-

The petitioner is a Public Trust registered under the Bombay Public Trusts Act, 1950. The petitioner-trust is running a primary school in Gujarati medium at Rajkot for the last more than 30 years. The school has about 14 divisions in all for standards I to VII. The school caters to the needs of lower and middle strata of the society by providing education to the children of these social strata. Presently, the school is being run in rented premises and on account of inadequate space the school is in need of land so that the petitioner can put up construction and expand the activities of the school. The petitioner-trust came to learn that just opposite the present building occupied by the petitioner-trust where the school is being run, an open plot of land admeasuring about 848.67 sq.mtrs. came to be declared as excess vacant land under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the ULC Act"). The petitioner, therefore, made an application dated 25.8.1994 (Annexure "A") to the State Government for disposal of the said land admeasuring 848.67 sq.mtrs. in favour of the petitioner under Section 23 of the ULC Act. In response to the said application, by letter dated 7.9.1994 (Annexure "B") the State Government sought certain information which was supplied by the petitioner by letter dated 19.9.1994 (Annexure "C"). The petitioner-trust also came to learn that the area of the land in question was reduced from 848 sq.mtrs. to 517 sq.mtrs. Certain further information again came to be sought from the petitioner by letter dated 4.10.1994 (Annexure "D") and the petitioner responded to the same and furnished further information alongwith their communication dated 10.11.1994 (Annexure "E"). Again the petitioner received communication dated 26.12.1994 (Annexure "F") to the effect that the petitioner's application was sent to the Additional Collector & Competent Authority, ULC, Rajkot for necessary verification and, therefore, the petitioner-trust should remain in touch with the said authority. The Managing Trustee and other officials of the petitioner-trust, therefore, contacted the Office of the Additional Collector & Competent Authority, ULC, Rajkot from time to time with a view to expediting the grant of land in favour of the petitioner-trust.

However, no further positive development was taking place and, therefore, the petitioner had to send a reminder dated 3.10.1996 (Annexure "G") to the Additional Collector & Competent Authority. Again representation dated 24.4.1997 (Annexure "H") was made by the petitioner to the Revenue Minister. It was only thereafter that on 3.9.1997 the State Government in the Revenue Department called upon the Additional Collector & Competent Authority, ULC, Rajkot to fix the price of the land as in December, 1994 and to complete the procedure as the matter was pending since 1994 and the Government had for the first time called upon the ULC authority in December, 1994 to send the report to the Government. The Deputy Town Planner, Rajkot, therefore, by his letter dated 2.9.1997 (Annexure "K") sent a statement showing the price of the land in question in December, 1994 at Rs.1350/- per sq.mtrs. and the Additional Collector, ULC in turn forwarded the said price fixation to the State Government by letter dated 1.12.1997 (Annexure "L"). Thereafter the Trustees of the petitioner were shocked to receive the letter dated 2.9.1998 (Annexure "M") informing the Managing Trustee that the price of the land in question has been fixed at Rs.4050/- per sq.mtr. and the amount was required to be deposited with Government Treasury within 30 days. The petitioner prayed for extension of time limit lest the land should be allotted to any other party and, therefore, by letter dated 11.11.1998 (Annexure "N"), the State Government extended the time for making the payment till 31.1.1999. The petitioner has thereafter filed this petition in 19.1.1999 challenging the upward revision in the price from Rs.1350/- per sq.mtr. to Rs.4050/- per sq.mtr.

4. On 29.1.1999, this Court also passed an interim order that the respondent shall not dispose of the land in favour of any other person nor shall the petitioner be disqualified from getting the land on the ground that the price demanded at the rate of Rs.4050/- per sq.mtrs. is not paid by the petitioner.

5. At the hearing of this petition, the learned counsel for the petitioner submitted that the petitioner had made an application for allotment of land declared as excess vacant land under the ULC Act as far as back in 25.8.1994 as per the application at Annexure "A" and the same was required to be decided by the Government within reasonable time of 3 to 4 months. The State Government had already called for the report from the Additional Collector & Competent Authority, ULC in December, 1994 and, therefore, the State Government had sent the communication dated 3.9.1997 to the Additional Collector

& Competent Authority, ULC to fix the price of the land as in December, 1994 and the Deputy Town Planner had accordingly fixed the price and communicated the same to the Competent Authority which in turn had forwarded the price fixation to the State Government on 1.12.1997. The learned counsel further submitted that the delay on the part of the respondent or its subordinates in deciding the application cannot work to the prejudice of the petitioner in the matter of fixing price and that this Court has already taken a view in the case of Ashutosh Sarkhari Karamchari Co-Op. Society Ltd. vs. State of Gujarat, 1995 (1) GCD 244 (Guj.) that delay in disposal of applications for allotment of surplus land under Section 23 of the ULC Act cannot be allowed to work to the prejudice of the allottee by fixing the price as on the date of allotment.

6. On the other hand, the learned AGP submitted that as far as fixing of price for surplus lands to be disposed of under Section 23 of the ULC Act is concerned, the matter is governed by the Government Resolution dated 30.5.1997 and clause (Kha) of the said Resolution states that the land shall be allotted at the ruling market price. It is further submitted that since the price ruling at the time of allotment is the normal base for fixing the price for allotment of Government lands, the respondent authorities were justified in fixing the price as in 1998 and, therefore, the petition deserves to be dismissed.

7. Having heard the learned counsel for the parties, it does appear from the material on record that inspite of the fact that the land in question was available for allotment since 1994 and inspite of the fact that the petitioner had made an application on 25.8.1994, the application was not finally decided within reasonable time and, therefore, the allotment has not been made so far. The learned counsel for the petitioner is justified in submitting that the fixation of price and the formalities for allotment could have been completed within 4 to 6 months and therefore, the inordinate delay on the part of the respondent in fixing the price cannot prejudice the petitioner by fixing the price ruling 4 years after the date of application. In this connection, the following observations made by this Court in the case of Ashutosh Sarkhari Karamchari Co-Op. Society Ltd. (Supra) deserve to be quoted :-

"5. It is true that, under the guidelines contained in the Government Resolution at

Annexure-A to this petition, the surplus land is to be allotted to the applicants on the prevalent market rate and the crucial question is the market value of the land in question at the time of application or at the time of allotment. Ordinarily, the fixation of market price should be treated as on the date of allotment. However, in the present case, the date of allotment will not have to be taken into consideration for the simple reason that there was inordinate delay in consideration of the petitioner's application.

7. It cannot be gainsaid that applications for allotment of surplus land available for disposal under section 23 of the Act have to be disposed of as expeditiously as possible in order to avoid creation of any inequality with respect to the price at which such land may be allotted. If no surplus land is available for disposal, applications for allotment may be kept pending. However, when land is available for disposal, applications should be disposed of as expeditiously as possible. Any delay in disposal of such applications might result into fixation of different prices at the time of allotment. It transpires from the record that the application if Sinchainagar was disposed of within seven months and that of Padmakunverba within about 14 months. Simply because their applications were to be considered by a different Committee from the Committee which was to consider the petitioner's application would not justify the inordinate delay in disposal of such applications. Inordinate delay in disposal of the petitioner's application for allotment of land has resulted in unreasonable fixation of its price vis-a-vis the price at which the land has come to be allotted to Sinchainagar and Padmakunverba. In that view of the matter, the fixation of price of the land proposed to be allotted to the petitioner can be said to be exorbitant and unreasonably high. It could not have been fixed at more than Rs.500/- per square metre."

8. In view of the principles enunciated in the aforesaid judgment of this Court and also in view of the fact that the Government itself had earlier decided to fix the price of the land as in December, 1994 (since the report from the Additional Secretary & Competent

Authority, ULC, Rajkot was called for in December, 1994), this petition deserves to be allowed and the impugned communications dated 2.9.1998 (Annexure "M") and dated 11.11.1998 (Annexure "N") deserve to be quashed and set aside and the fixation of price by the respondent at Rs.4050/- per sq.mtr. is hereby quashed and set aside and the matter is remanded to the respondent for its fresh decision according to law in light of the observations made in this judgment and also in the judgment of this Court in the case of Ashutosh Sarkhari Karamchari Co-Op. Society Ltd. vs. State of Gujarat, 1995 (1) GCD 244 (Guj.). The respondent is directed to take its decision as expeditiously as possible and in any case latest by March 31, 1999.

9. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

Direct Service to be effected by 16.2.99.

Sd/-

February 5, 1999 (M.S. Shah, J.)

sundar/-